Home Office

AUTHORITY: The Secretary of State for the Home Department

Volume 3

Schedule – P
Financial Distress

Travel Services

ITT DOCUMENT LIST

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1. DEFINITIONS & SCOPE

1.1 In this schedule the following terms shall have the meanings set out below:

"Credit Rating Thresholds"	the credit rating thresholds as set out in this Appendix B to Schedule P (*Financial Distress*);
"Financial Distress Event"	the occurrence of one or more of the events listed in paragraph 3.1 of this Schedule P (*Financial Distress*);
"Financial Distress Service Continuity Plan"	a plan setting out how the Service Provider (together with the Guarantor and/or Permitted Sub-contractors, where appropriate) will ensure the continued performance and delivery of the Services in accordance with this Contract in the event that the Service Provider, the Guarantor and/or a Permitted Sub-contractor suffers a Financial Distress Event;
"Rating Agencies"	the rating agencies listed in Appendix A to this Schedule P (*Financial Distress*);
"Permitted Sub-contractor Credit Rating Threshold"	the Credit Rating Thresholds as set out in Appendix B to this Schedule P (*Financial Distress)*;
"Permitted Sub-contractor Financial Distress Event"	the occurrence of one or more of the events referred to in paragraph 6 of this Schedule P (*Financial Distress)*;

1.2 In the event that the Service Provider or any of its Permitted Sub-Contractors experiences any financial distress which may impact its ability to carry out the Services, the Authority will undertake an assessment of the circumstances and shall agree with the Service Provider suitable steps to ensure continuity of the Services.

1.3 The Service Provider shall, as soon as it or any of its Permitted Sub-Contractors enter into a period of financial distress which will or may make it difficult for it to continue providing Services, notify the Authority.

1.4 The Authority will consider the following to assess the total risk and identify the mitigation and contingency plans which shall apply in the event of a Financial Distress Event, which shall be discussed and agreed with the Service Provider:

1.4.1 Assessment of credit rating of the Service Provider and/or a Sub-Contractor ;

1.4.2 Assessment of risk levels arising as a result of Financial Distress event in relation

to the Service Provider and/or a Sub-Contractor ; and/or

Remedies available to the Authority against the Service Provider and/or the Sub-Contractor.

2. CREDIT RATING AND DUTY TO NOTIFY

2.1 The Service Provider warrants and represents to the Authority for the benefit of the Authority that as at the Contract Signature Date the long term credit ratings issued for Service Provider, Guarantor and any Permitted Sub-contractor by the Rating Agencies are accurate and a true reflection of the Service Provider's financial position.

2.2 The Service Provider shall procure that the Guarantor and Permitted Sub-contractors shall maintain the credit ratings as set out in this Schedule.

2.3 The Service Provider shall promptly notify the Authority in writing if it, the Guarantor or a Permitted Sub-Contractor ceases to have credit ratings, the credit ratings set out in paragraph 2.1 above (and in any event within ten (10) Working Days of ceasing to have such credit rating), whereupon the Service Provider shall ensure its auditors provide the Authority with the credit rating or an equivalent recognised assurance of financial stability.

2.4 The Service Provider shall:

2.4.1 regularly monitor the Service Provider's, the Guarantor's and the Permitted Sub-contractor's credit ratings with the Rating Agencies; and

2.4.2 promptly notify (or shall procure that its auditors promptly notify) the Authority in writing following the occurrence of a Financial Distress Event, a Permitted Sub-contractor Financial Distress Event or any fact, circumstance or matter which could cause a Financial Distress Event or a Permitted Sub-contractor Financial Distress Event (and in any event, ensure that such notification is made within ten (10) Working Days of the date on which the Service Provider first becomes aware of the Financial Distress Event, the Permitted Sub-contractor Financial Distress Event or the fact, circumstance or matter which could cause a Financial Distress Event or a Permitted Sub-contractor Financial Distress Event).

2.5 Where the Service Provider's or the Guarantor's and/or Permitted Sub-Contractor's credit ratings provided by the Rating Agencies listed in Appendix A to this Schedule P (*Financial Distress*) differ, for the purposes of the Financial Distress Events or the Permitted Sub-Contractor Financial Distress Events, the relevant Credit Rating Threshold shall be determined by reference to the lower credit rating.

3. CONSEQUENCES OF A FINANCIAL DISTRESS EVENT

3.1 In the event of:

3.1.1 the Service Provider's, Guarantor's or Permitted Sub-contractor's credit ratings dropping one or more levels below the Credit Rating Threshold;

3.1.2 the Service Provider, Guarantor or Permitted Sub-contractor issuing a profits warning to a stock exchange or making any other public announcement about a

material deterioration in its financial position or prospects;

3.1.3 there being a public investigation into improper financial accounting and reporting, suspected fraud or any other impropriety of the Service Provider, Guarantor or Permitted Sub-contractor; or

3.1.4 the Service Provider or Guarantor committing a material breach of covenants to its lenders,

3.1.5 a Permitted Sub-Contractor notifying the Authority that the Service Provider has not satisfied any material sums properly due under a specified invoice and not subject to a genuine dispute; or

3.1.6 any of the following:

a) commencement of any litigation against the Service Provider or the Guarantor with respect to financial indebtedness or obligation under a service contract;

b) non payment by the Service Provider or the Guarantor of any financial indebtedness;

c) any financial indebtedness of the Service Provider or the Guarantor becoming due as a result of an event of default; or

d) the cancellation or suspension of any financial indebtedness in respect of the Service Provider or the Guarantor, which the Authority reasonably believes could directly impact on the continued performance and delivery of the Services in accordance with this Contract.

immediately upon notification of the Financial Distress Event (or if the Authority becomes aware of the Financial Distress Event without notification and brings the event to the attention of the Service Provider), the Service Provider shall have the obligations and the Authority shall have the rights and remedies as set out in paragraphs 3.3 – 3.6.

3.2 In the event of late or non-payment of a Permitted Sub-Contractor pursuant to paragraph 3.1.5, the Authority shall not exercise any of its rights or remedies under paragraph this 3.6 without first giving the Service Provider ten (10) Working Days to:

3.2.1 rectify such late or non-payment; or

3.2.2 demonstrate to the Authority's reasonable satisfaction that there is a valid reason for late or non-payment.

3.3 The Service Provider shall and shall procure that the Guarantor shall:

3.3.1 at the request of the Authority meet with the Authority as soon as reasonably practicable and in any event within three (3) Working Days of the initial notification (or awareness) of the Financial Distress Event (or such other period as the Authority may permit and notify to the Service Provider in writing) to review the effect of the Financial Distress Event on the continued performance and delivery of the Services in accordance with this Agreement; and

3.3.2 where the Authority reasonably believes (taking into account the discussions and any representations made under paragraph 3.3.1) that the Financial Distress Event could impact on the continued performance and delivery of the Services in accordance with this Agreement it may require the Service Provider to:

a) submit to the Authority for its approval, a draft Financial Distress Service Continuity Plan as soon as reasonably practicable (and in any event, within

ten (10) Working Days of the initial notification (or awareness) of the Financial Distress Event or such other period as the Authority may permit and notify to the Service Provider in writing); and

b) provide such financial information relating to the Service Provider or the Guarantor as the Authority may reasonably require.

3.4 The Authority shall not withhold its approval of a draft Financial Distress Service Continuity Plan unreasonably. If the Authority does not approve the draft Financial Distress Service Continuity Plan, it shall inform the Service Provider of its reasons and the Service Provider shall take those reasons into account in the preparation of a further draft Financial Distress Service Continuity Plan, which shall be resubmitted to the Authority within five (5) Working Days of the rejection of the first draft. This process shall be repeated until the Financial Distress Service Continuity Plan is approved by the Authority or referred to the Escalation Process under paragraph 6.5 below.

3.5 If the Authority considers that the draft Financial Distress Service Continuity Plan is insufficiently detailed to be properly evaluated, will take too long to complete or will not remedy the relevant Financial Distress Event, then it may either agree a further time period for the development and agreement of the Financial Distress Service Continuity Plan or escalate any issues within the strategic review meetings set out in Schedule 7 (Contract Management).

3.6 Following approval of the Financial Distress Service Continuity Plan by the Authority, the Service Provider shall:

3.6.1 On a regular basis (which shall not be less than monthly), review the Financial Distress Service Continuity Plan and assess whether it remains adequate and up to date to ensure the continued performance and delivery of the Services in accordance with this Agreement;

3.6.2 Where the Financial Distress Service Continuity Plan is not adequate or up to date in accordance with paragraph 6.6.1, submit an updated Financial Distress Service Continuity Plan to the Authority for its approval, and the provisions of paragraphs 3.4 and 3.5 shall apply to the review and approval process for the updated Financial Distress Service Continuity Plan; and

3.6.3 Comply with the Financial Distress Service Continuity Plan (including any updated Financial Distress Service Continuity Plan).

3.7 Where the Service Provider reasonably believes that the relevant Financial Distress Event under paragraph 3.1 (or the circumstance or matter which has caused or otherwise led to it) no longer exists, it shall notify the Authority and the parties may agree that the Service Provider shall be relieved of its obligations under paragraph 3.6.

4. TERMINATION RIGHTS

4.1 The Authority shall be entitled to terminate the Contract under Clause 30 (*Termination for Default*) of the Contract if:

4.1.1 the Service Provider fails to notify the Authority of a Financial Distress Event in accordance with paragraph 2.4; and/or

4.1.2 the parties fail to agree a Financial Distress Service Continuity Plan (or any updated Financial Distress Service Continuity Plan) in accordance with paragraphs 3.3 – 3.5 and/or 6.2.2; and/or

4.1.3 the Service Provider fails to comply with the terms of the Financial Distress Service Continuity Plan (or any updated Financial Distress Service Continuity Plan) in accordance with paragraphs 3.6.3and/or 6.2.4.

5. PRIMACY OF CREDIT RATINGS

5.1 Without prejudice to the Service Provider's obligations and the Authority's rights and remedies under paragraphs 3 or 6, if, following the occurrence of a Financial Distress Event pursuant to paragraphs 3.1.2 - 3.1.6 or a Permitted Sub-Contractor Financial Distress Event pursuant to paragraphs 6.1.2 – 6.1.5, the Rating Agencies review and report subsequently that the credit ratings do not drop below the relevant Credit Rating Threshold, then:

5.1.1 the Service Provider shall be relieved automatically of its obligations under paragraphs 3.3- 3.6 and/or 6.2; and

5.1.2 the Authority shall not be entitled to require the Service Provider to provide financial information in accordance with paragraphs 3.3.2b).

6. PERMITTED SUB-CONTRACTOR FINANCIAL DISTRESS

6.1 In the event of:

6.1.1 a Permitted Sub-contractor's credit ratings dropping one or more levels below the Sub-contractor Credit Rating Threshold;

6.1.2 a Permitted Sub-contractor issuing a profits warning to a stock exchange or making any other public announcement about a material deterioration in its financial position or prospects;

6.1.3 there being a public investigation into improper financial accounting and reporting, suspected fraud or any other impropriety of a Permitted Sub-contractor; or

6.1.4 a Permitted Sub-contractor committing a material breach of covenants to its lenders,

6.1.5 or any of the following occurs:

a) commencement of any litigation against the Permitted Sub-contractor with respect to financial indebtedness or obligation under a service contract; or

b) non payment by the Permitted Sub-contractor of any financial indebtedness; or

c) any financial indebtedness of the Permitted Sub-contractor becoming due as a result of an event of default; or

d) the cancellation or suspension of any financial indebtedness in respect of the Permitted Sub-Contractor, which the Authority reasonably believes could directly impact on the continued performance and delivery of the Services in

accordance with this Agreement;

then, immediately upon notification of the Sub-contractor Financial Distress Event (or if the Authority becomes aware of the Sub-contractor Financial Distress Event without notification and brings the event to the attention of the Service Provider), the Service Provider shall have the obligations and the Authority shall have the rights and remedies as set out in paragraph 6.2.

6.2 The Service Provider shall (and shall procure that the relevant Permitted Sub-contractor shall):

6.2.1 at the request of the Authority, meet with the Authority as soon as reasonably practicable (and in any event, within three (3) Working Days of the initial notification (or awareness) of the Permitted Sub-contractor Financial Distress Event or such other period as the Authority may permit and notify to the Service Provider in writing) to review the effect of the Permitted Sub-contractor Financial Distress Event on the continued performance and delivery of the Services in accordance with this Agreement;

6.2.2 where the Authority reasonably believes (taking into account the discussions and any Service Provider and Permitted Sub-contractor representations made under paragraph 6.2.1) that the Permitted Sub-contractor Financial Distress Event could impact on the continued performance and delivery of the Services in accordance with this Contract, submit to the Authority for its approval, a draft Financial Distress Service Continuity Plan as soon as reasonably practicable (and in any event, within ten (10) Working Days of the initial notification (or awareness) of the Permitted Sub-contractor Financial Distress Event or such other period as the Authority may permit and notify to the Service Provider in writing), which shall be reviewed and approved in accordance with the provisions of paragraphs 3.4 and 3.5;

6.2.3 review and update with the Financial Distress Service Continuity Plan in accordance with paragraphs 3.6.1and 3.6.2;

6.2.4 comply with the Financial Distress Service Continuity Plan (including any updated Financial Distress Service Continuity Plan); and

6.2.5 provide such financial information relating to the Permitted Sub-contractor as the Authority may reasonably require.

6.3 Where the Service Provider reasonably believes that the relevant Permitted Sub-contractor Financial Distress Event (or the circumstance or matter which has caused or otherwise led to it) no longer exists, it shall notify the Authority and the parties may agree that the Service Provider shall be relieved of its obligations under paragraphs 6.2.3 and 6.2.4.

APPENDIX A – CREDIT RATINGS AT CONTRACT COMMENCEMENT

RATING AGENCY

REDACTED

APPENDIX B

CREDIT RATING THRESHOLDS

REDACTED